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October Term, 1986

In the Supreme Court of the United States

No. 86-130

Vickie Lorene Rock ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

RESPONDENT STATE OF ARKANSAS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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REASON FOR DENYING THE PETITION FOR CERTIORARI

I.

THE ARKANSAS SUPREME COURT'S ASSESSMENT OF PETITIONER ROCK'S TESTIMONY AT TRIAL IS CORRECT IN THAT PETITIONER ROCK WAS ABLE TO TESTIFY IN SUFFICIENT DETAIL SUCH THAT SHE WAS ABLE TO DEFEND HERSELF.

There are no issues of constitutional law presented in the instant case that are worthy of a grant of certiorari by this Court. Petitioner Rock's petition poses no issues of constitutional law for which there is an urgent need for

national uniformity. Nor does Rock's petition present an instance of manifest injustice such that there is a reasonable probability that an innocent person was wrongfully convicted. Rock's petition does present a fact-bound record which she invites this Court to reinterpret.

On review by certiorari of affirmances by state appellate courts in criminal cases, this Court will not determine anew the existence of historical facts. *See Watts v. Indiana*, 338 U.S. 49, 50-1 (1949). However, where inferences drawn from historical facts bear on the infringement *vel non* by the State of a defendant's constitutional rights, then this Court will analyze the facts of the case, such as they are, to see if the defendant's constitutional rights were denied. *Drope v. Missouri*, 420 U.S. 162, 174-75 (1975); *Watts v. Indiana*, *supra*; and *Norris v. Alabama*, 294 U.S. 587, 590 (1935).

Rock can only obtain relief from this Court if it disagrees with the conclusion reached by the Arkansas Supreme Court concerning Rock's alleged inability to testify in her own defense. All Rock's arguments in her petition ultimately assert this claim. The Arkansas Supreme Court reviewed Rock's trial testimony and concluded " . . . nothing was excluded that would have been of much assistance to appellant, or would have enlarged on her testimony to any significant degree." Appendix at xiii. Rock's three arguments amount to an invitation to this Court to disagree with the assessment by the Arkansas Supreme Court of her trial testimony. She has completely failed to show *how* the Arkansas Supreme Court's assessment of her testimony is incorrect. Respondent submits that as a matter of fundamental fairness, arising out of concerns for due process, Rock's testimony to the jury that the shooting of her husband was an accident and that she did not mean to shoot him enabled Rock to defend herself at trial. This is especially so given that Rock, as she admits in her petition, was able to introduce expert testimony which established that the pistol at issue could easily have discharged accidentally. Petition at 8.

CONCLUSION

THEREFORE, respondent respectfully requests that this Honorable Court deny petitioner Rock's petition for a writ of certiorari to the Supreme Court of Arkansas.

Respectfully submitted,

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